

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 663

Introduced by Janssen, 15.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to amend sections 70-1012
2 and 70-1012.01, Reissue Revised Statutes of Nebraska; to
3 adopt the Net Metering Act; to exempt certain utilities
4 from a requirement for approval by the Nebraska Power
5 Review Board; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 69 of this act shall be known
2 and may be cited as the Net Metering Act.

3 Sec. 2. For purposes of the Net Metering Act, the
4 definitions found in sections 3 to 26 apply.

5 Sec. 3. Average annual fuel savings means the annualized
6 difference between the system fuel costs that a utility would have
7 incurred without an additional generation facility and the system
8 fuel costs the utility is expected to incur with an additional
9 generation facility.

10 Sec. 4. Average retail utility energy rate means,
11 for any class of utility customer, the quotient of the total
12 annual class revenue from sales of electricity minus the annual
13 revenue resulting from fixed charges, divided by the annual class
14 kilowatt-hour sales. Data from the most recent twelve-month period
15 available before each filing required by sections 28 to 31 of this
16 act shall be used in the computation.

17 Sec. 5. Backup power means energy or capacity supplied by
18 a utility to replace energy ordinarily generated by a qualifying
19 facility's own generation equipment during an unscheduled outage of
20 the facility.

21 Sec. 6. Board means the Nebraska Power Review Board.

22 Sec. 7. Capacity means the capability to produce,
23 transmit, or deliver energy.

24 Sec. 8. Capacity costs means costs associated with
25 providing the capability to deliver energy, including, but not

1 limited to, the capital costs of facilities used to generate,
2 transmit, and distribute electricity and the fixed operating and
3 maintenance costs of such facilities.

4 Sec. 9. Energy means energy measured in kilowatt-hours.

5 Sec. 10. Energy costs means the variable costs associated
6 with the production of energy, including fuel costs and variable
7 operating and maintenance expenses.

8 Sec. 11. Firm power means energy delivered by a
9 qualifying facility to a utility with at least a sixty-five percent
10 on-peak capacity factor in any month. The capacity factor is based
11 upon the qualifying facility's maximum on-peak metered capacity
12 delivered to the utility during the month.

13 Sec. 12. Generating utility means a utility which
14 regularly meets all or a portion of its electric load through the
15 scheduled dispatch of its own generating facilities.

16 Sec. 13. Incremental cost of capital means the current
17 weighted cost of the components of a utility's capital structure,
18 each cost weighted by its proportion of the total capitalization.

19 Sec. 14. Interconnection costs means the reasonable costs
20 of connection, switching, metering, transmission, distribution,
21 safety, and administrative costs incurred by a utility that
22 are directly related to installing and maintaining the physical
23 facilities necessary to permit interconnected operations with a
24 qualifying facility. Costs are interconnection costs only to the
25 extent that they exceed the corresponding costs which the utility

1 would have incurred if it had not engaged in interconnected
2 operations but instead generated from its own facilities or
3 purchased from other sources an equivalent amount of energy or
4 capacity. Costs are interconnection costs only to the extent
5 that they exceed the costs the utility would incur in selling
6 electricity to the qualifying facility as a nongenerating customer.

7 Sec. 15. Interruptible power means energy or capacity
8 supplied by a utility to a qualifying facility subject to
9 interruption under the provisions of the utility's tariff
10 applicable to the retail class of customers to which the qualifying
11 facility would belong regardless of its ability to generate
12 electricity.

13 Sec. 16. Maintenance power means energy or capacity
14 supplied by a utility during scheduled outages of a qualifying
15 facility.

16 Sec. 17. Marginal capital carrying charge rate in the
17 first year of investment means the percentage factor by which the
18 amount of a new capital investment in a generating unit would have
19 to be multiplied to obtain an amount equal to the total additional
20 first-year amounts for the cost of equity and debt capital, income
21 taxes, property taxes, and other taxes, tax credits amortized over
22 the useful life of the generating unit, depreciation, and insurance
23 which would be associated with the new capital investment and would
24 account for the likely inflationary or deflationary changes in the
25 investment cost due to a one-year delay in building the unit.

1 Sec. 18. Nongenerating utility means a utility (1) (a)
2 which has no electric generating facilities or (b) the electric
3 generating facilities of which are used only during emergencies or
4 readiness tests or (2) the electric generating facilities of which
5 are ordinarily dispatched by another entity.

6 Sec. 19. On-peak hours means, for utilities whose rates
7 are regulated by the board, the hours which are defined as on-peak
8 for retail ratemaking. For any other utility, on-peak hours are
9 either the hours formally designated by the utility as on-peak for
10 ratemaking purposes or the hours for which its typical loads are at
11 least eighty-five percent of its average maximum monthly loads.

12 Sec. 20. Purchase means the purchase of energy or
13 capacity or both from a qualifying facility by a utility.

14 Sec. 21. Qualifying facility means a cogeneration or
15 small power production facility which satisfies the conditions
16 established in 18 C.F.R. 292.101(b)(1). The initial operation date
17 or initial installation date of a cogeneration or small power
18 production facility shall not prevent the facility from being
19 considered a qualifying facility if it otherwise satisfies the
20 conditions.

21 Sec. 22. Sale means the sale of energy or capacity or
22 both by a utility to a qualifying facility.

23 Sec. 23. Supplementary power means energy or capacity
24 supplied by the utility which is regularly used by a qualifying
25 facility in addition to that which the qualifying facility

1 generates itself.

2 Sec. 24. System emergency means a condition on a
3 utility's system which is imminently likely to result in
4 significant disruption of service to customers or to endanger life
5 or property.

6 Sec. 25. System incremental energy costs means amounts
7 representing the hourly energy costs associated with the utility
8 generating the next kilowatt-hour of load during each hour.

9 Sec. 26. Utility means (1) a district as defined in
10 section 70-601 engaged in the business of conducting or carrying
11 on, in service to the public, any one or more of the functions
12 or operations of generation, transmission, distribution, sale, and
13 purchase of electrical energy for purposes of lighting, power, and
14 heating and any and all plants, lines, systems, and any other
15 property owned, used, operated, or useful for such business and (2)
16 an electric cooperative organized under the Electric Cooperative
17 Corporation Act.

18 Sec. 27. The purpose of the Net Metering Act is to give
19 the maximum possible encouragement to cogeneration and small power
20 production consistent with protection of ratepayers and the public.

21 Sec. 28. Within sixty days after the effective date of
22 this act and every twelve months thereafter, each utility shall
23 file with the board, for its review and approval, a cogeneration
24 and small power production tariff. The tariff for generating
25 utilities shall contain the information described in subdivisions

1 (1) through (7) of section 30 of this act, except that generating
2 utilities with less than five hundred million kilowatt-hour sales
3 in the calendar year preceding the filing may substitute their
4 retail rate schedules for the information described in subdivisions
5 (1) and (2) of such section. The tariff for nongenerating utilities
6 shall contain the information described in subdivisions (3) through
7 (6) and (8) of such section and may, at the option of the utility,
8 contain the information described in subdivisions (1) and (2) of
9 such section, using data from the utility's wholesale supplier.

10 Sec. 29. If, after the initial filing pursuant to section
11 28 of this act, the information described in subdivision (3) of
12 section 30 of this act is the only change in the cogeneration and
13 small power production tariff to be filed in a subsequent year,
14 the utility may notify the board in writing, by the date the
15 tariff is due, that there is no other change in the tariff. Such
16 notification and the new information described in such subdivision
17 shall comprise the refiling of the complete tariff in such year.

18 Sec. 30. Except as provided in section 28 of this act,
19 generating utilities shall file the following information:

20 (1) The estimated system average incremental energy costs
21 by seasonal peak and off-peak periods for each of the ensuing five
22 years. For each seasonal period, system incremental energy costs
23 shall be averaged during system daily peak hours, system daily
24 off-peak hours, and all hours in the season, including a detailed
25 description of the method used to determine the on-peak and

1 off-peak hours and seasonal periods and shall show the resulting
2 on-peak and off-peak and seasonal hours selected. For cogeneration
3 and small power production, the energy costs shall be increased by
4 a factor equal to fifty percent of the line losses shown in the
5 information filed pursuant to subdivision (2) of this section;

6 (2)(a) A description of all planned utility generating
7 facility additions anticipated during the next ten years,
8 including: (i) The name of the unit; (ii) the nameplate rating;
9 (iii) the fuel type; (iv) the in-service date; (v) the completed
10 cost in dollars per kilowatt in the year in which the plant is
11 expected to be put in service, including allowance for funds used
12 during construction; (vi) the anticipated average annual fixed
13 operating and maintenance costs in dollars per kilowatt; (vii)
14 energy costs associated with the unit, including fuel costs and
15 variable operating and maintenance costs; (viii) the projected
16 average number of kilowatt-hours per year the plant will generate
17 during its useful life; and (ix) the average annual fuel savings
18 resulting from the addition of the generating facility, stated in
19 dollars per kilowatt;

20 (b) Planned firm capacity purchases, other than from
21 qualifying facilities, during the next ten years, including: (i)
22 Year of the purchase; (ii) name of the seller; (iii) number of
23 kilowatts of capacity to be purchased; (iv) capacity cost in
24 dollars per kilowatt; and (v) associated energy cost in cents per
25 kilowatt-hour;

1 (c) The utility's overall average percentage of line
2 losses due to the distribution, transmission, and transformation of
3 energy;

4 (d) Net annual avoided capacity cost stated in dollars
5 per kilowatt-hour averaged over the on-peak hours and the
6 utility's net annual avoided capacity cost stated in dollars per
7 kilowatt-hour averaged over all hours, calculated as follows:

8 (i) The completed cost per kilowatt of the utility's
9 next major generating facility addition pursuant to subdivision
10 (2)(b)(v) of this section shall be multiplied by the utility's
11 marginal capital carrying charge rate in the first year of
12 investment. If the utility is unable to determine this carrying
13 charge rate as specified, the rate of fifteen percent shall be
14 used;

15 (ii) The dollar amount resulting from the calculation set
16 forth in subdivision (2)(d)(i) of this section shall be discounted
17 to present value, using the incremental cost of capital as the
18 discount rate, of the midpoint of the reporting year, from the
19 in-service date of the generating unit;

20 (iii) The figure for average annual fuel savings per
21 kilowatt described in subdivision (2)(a)(ix) of this section shall
22 be discounted to present value using the method described in
23 subdivision (2)(d)(ii) of this section;

24 (iv) The number resulting from the calculation in
25 subdivision (2)(d)(iii) of this section shall be subtracted from

1 the number resulting from the calculation in subdivision (2) (d) (ii)
2 of this section to arrive at the net annual avoided capacity cost
3 stated in dollars per kilowatt at present value;

4 (v) The net annual avoided capacity cost described in
5 subdivision (2) (d) (iv) of this section shall be multiplied by 1.15
6 to calculate the reserve margin;

7 (vi) The reserve margin calculated pursuant to
8 subdivision (2) (d) (v) of this section shall be increased by the
9 present value of the anticipated average annual fixed operating and
10 maintenance costs as reported in subdivision (2) (a) (vi) of this
11 section. The present value shall be determined using the procedure
12 described in subdivision (2) (d) (ii) of this section;

13 (vii) The figure determined from the calculation of
14 subdivision (2) (d) (vi) of this section shall be increased by
15 one-half of the percentage amount of the average system line losses
16 described in subdivision (2) (c) of this section;

17 (viii) The annual dollar per kilowatt figure, as
18 calculated pursuant to subdivision (2) (d) (vii) of this section,
19 shall be divided by the annual number of hours in the on-peak
20 period stated pursuant to subdivision (1) of this section to
21 determine the utility's net annual on-peak avoided capacity cost
22 in dollars per kilowatt-hour; and

23 (ix) The annual dollar per kilowatt figure resulting
24 from the calculation specified in subdivision (2) (d) (vii) of this
25 section shall be divided by the total number of hours in the year

1 to determine the utility's net annual avoided capacity cost in
2 dollars per kilowatt-hour averaged over all hours;

3 (e) If the utility has no planned generating facility
4 additions for the ensuing ten years but has planned additional
5 capacity purchases, other than from qualifying facilities, during
6 the ensuing ten years, the information filed pursuant to
7 subdivision (2) of this section shall contain the utility's net
8 annual avoided capacity cost stated in dollars per kilowatt-hour
9 averaged over the on-peak hours and the utility's net annual
10 avoided capacity costs stated in dollars per kilowatt-hour averaged
11 over all hours, calculated as follows:

12 (i) The annual capacity purchase amount, in dollars per
13 kilowatt-hour, for the utility's next planned capacity purchase,
14 other than from a qualifying facility, shall be discounted to
15 present value, using the incremental cost of capital as the
16 discount rate, as of the midpoint of the reporting year, from the
17 year of the planned capacity purchase; and

18 (ii) The net annual avoided capacity cost shall be
19 computed by applying the figure determined in subdivision (2) (e) (i)
20 of this section to the steps enumerated in subdivisions (2) (d) (iv),
21 (v), and (vii) through (ix); and

22 (f) If the utility has neither planned generating
23 facility additions nor planned additional capacity purchases, other
24 than from qualifying facilities, during the ensuing ten years, the
25 utility is deemed to have no avoidable capacity costs;

1 (3) The calculation of the average retail utility energy
2 rates;

3 (4) All standard contracts to be used with qualifying
4 facilities containing applicable terms and conditions;

5 (5) The utility's safety standards, required operating
6 procedures for interconnected operations, and the functions to
7 be performed by any control and protective apparatus, which
8 standards and procedures shall not be more restrictive than the
9 interconnection guidelines listed in sections 57 to 67 of this
10 act. The utility may include in the information filed pursuant
11 to this subdivision suggested types of equipment to perform the
12 specified functions. No standard or procedure shall be established
13 to discourage cogeneration or small power production;

14 (6) Procedures for notifying affected qualifying
15 facilities of any periods of time when the utility will not
16 purchase energy or capacity because of extraordinary operational
17 circumstances which would make the costs of purchases during those
18 periods greater than the costs of internal generation;

19 (7) All computations made by the utility in determining
20 the information filed pursuant to subdivisions (1) and (2) of this
21 section; and

22 (8) The rates at which a nongenerating utility purchases
23 energy and capacity. If a nongenerating utility has more than one
24 wholesale supplier, the filing shall list the rates of the supplier
25 from which purchases may first be avoided. If the nongenerating

1 utility with more than one wholesale supplier also chooses to file
2 the information required pursuant to subdivisions (1) and (2) of
3 this section, the data on such filings shall be obtained from the
4 supplier from which purchases may first be avoided.

5 Sec. 31. All filings required by sections 28 to 30 of
6 this act shall be made with the board and maintained at the
7 utility's general office and any other offices of the utility
8 where rate case filings are kept and shall be available for public
9 inspection at the board and at the utility offices during normal
10 business hours.

11 Sec. 32. Each utility interconnected with a qualifying
12 facility shall provide the board with the information described
13 in sections 33 to 36 of this act within ninety days after the
14 effective date of this act, on or before March 1, 2010, and on or
15 before March 1 annually thereafter, in such form as the board may
16 require.

17 Sec. 33. (1) For qualifying facilities under net energy
18 billing, the utility shall provide the board with the following
19 information:

20 (a) A summary of the total number of interconnected
21 qualifying facilities, the type of interconnected qualifying
22 facilities by energy source, and the nameplate ratings of such
23 units;

24 (b) For each qualifying facility type, the total
25 kilowatt-hours delivered per month to the utility by all net energy

1 billed qualifying facilities;

2 (c) For each qualifying facility type, the total
3 kilowatt-hours delivered per month by the utility to all net energy
4 billed qualifying facilities; and

5 (d) For each qualifying facility type, the total net
6 energy delivered per month to the utility by net energy billed
7 qualifying facilities.

8 (2) For all qualifying facilities not under net energy
9 billing, the utility shall provide the board with the following
10 information:

11 (a) A summary of the total number and type of
12 interconnected qualifying facilities and the nameplate ratings of
13 such units; and

14 (b) For each qualifying facility type, the total
15 kilowatt-hours delivered per month to the utility, reported by
16 on-peak and off-peak periods to the extent that data is available.

17 Sec. 34. Each utility shall provide a summary of
18 all wheeling activities undertaken with respect to qualifying
19 facilities.

20 Sec. 35. Each utility may provide a statement of any
21 major impacts that cogeneration or small power production has had
22 on the utility's system.

23 Sec. 36. Each utility may provide a statement of the
24 effectiveness of the Net Metering Act in encouraging cogeneration
25 and small power production.

1 Sec. 37. A utility shall purchase energy and capacity
2 from any qualifying facility which offers to sell energy to the
3 utility and agrees to the following conditions:

4 (1) A written contract shall be executed between the
5 qualifying facility and the utility;

6 (2) The interconnection between the qualifying facility
7 and the utility must comply with the requirements of the National
8 Electrical Safety Code;

9 (3) The qualifying facility, without cost to the utility,
10 shall furnish, install, operate, and maintain in good order and
11 repair any apparatus the qualifying facility needs in order to
12 operate in accordance with subdivision (5) of section 30 of this
13 act;

14 (4) The utility or qualifying facility may require proof
15 of coverage or the procurement of a reasonable amount of liability
16 insurance up to three hundred thousand dollars as a condition of
17 service;

18 (5) Payments for interconnection costs may be made at the
19 time the costs are incurred or be made according to any schedule
20 agreed upon by the qualifying facility and the utility;

21 (6) The utility shall offer backup, interruptible,
22 maintenance, and supplementary power to the qualifying facility
23 upon request;

24 (7) The utility shall meter the qualifying facility to
25 obtain the data necessary to fulfill its reporting requirements

1 to the board as specified in sections 32 to 36 of this act. The
2 qualifying facility shall pay for the requisite metering as an
3 interconnection cost;

4 (8) The utility may discontinue sales to the qualifying
5 facility during a system emergency, if the discontinuance and
6 recommencement of service is not discriminatory; and

7 (9) The utility may require the qualifying facility
8 to submit an interconnection plan not more than thirty days
9 prior to interconnection in order to facilitate interconnection
10 arrangements. If such a plan is required, it shall include no more
11 than:

12 (a) Technical specifications of equipment;

13 (b) The proposed date of interconnection; and

14 (c) A projection of net output or consumption by the
15 qualifying facility when available.

16 Sec. 38. Nothing in section 37 of this act affects the
17 responsibility, liability, or legal rights of any party to the
18 contract described in such section under applicable law. No party
19 may require the execution of an indemnity or hold harmless clause
20 in such contract as a condition of service.

21 Sec. 39. Except as otherwise provided in section 40
22 of this act, rates for sales to a qualifying facility shall
23 be governed by the applicable tariff for the class of utility
24 customers to which the qualifying facility would belong if it were
25 not a qualifying facility.

1 Sec. 40. Any qualifying facility or utility may petition
2 the board for establishment of specific rates for backup,
3 interruptible, maintenance, or supplementary power.

4 Sec. 41. For a qualifying facility with capacity of
5 one hundred kilowatts or less, standard rates apply. A qualifying
6 facility with capacity of more than one hundred kilowatts may
7 negotiate contracts with the utility or may be compensated under
8 standard rates if it makes commitments to provide firm power. The
9 utility shall make available the three types of standard rates
10 described in sections 42, 43, and 44 of this act. A qualifying
11 facility with a capacity of one hundred kilowatts or less shall
12 choose interconnection under one of such rates and shall specify
13 its choice in the written contract required in section 37 of this
14 act. Any net credit to a qualifying facility shall, at its option,
15 be credited to its account with the utility or returned by check
16 within fifteen days after the billing date. The option chosen shall
17 be specified in the written contract required pursuant to such
18 section. A qualifying facility remains responsible for any monthly
19 service charges and demand charges specified in the tariff under
20 which it consumes electricity from a utility.

21 Sec. 42. (1) The net energy billing rate is available
22 only to qualifying facilities with capacity less than forty
23 kilowatts which choose not to offer electric power for sale on
24 either a time-of-day basis or a simultaneous purchase and sale
25 basis.

1 (2) A utility shall bill the qualifying facility for the
2 excess of energy supplied by the utility above energy supplied by
3 the qualifying facility during each billing period according to the
4 utility's applicable retail rate schedule.

5 (3) When the energy generated by the qualifying facility
6 exceeds that supplied by the utility during a billing period, the
7 utility shall compensate the qualifying facility for the excess
8 energy at the average retail utility energy rate.

9 Sec. 43. (1) The simultaneous purchase and sale rate is
10 available only to qualifying facilities with capacity less than
11 forty kilowatts which choose not to offer electric power for sale
12 on a time-of-day basis.

13 (2) The qualifying facility shall be billed for all
14 energy and capacity it consumes during a billing period according
15 to the utility's applicable retail rate schedule.

16 (3) The utility shall purchase all energy and capacity
17 which is made available to it by the qualifying facility. At the
18 option of the qualifying facility, its entire generation shall
19 be deemed to be made available to the utility. Compensation to
20 the qualifying facility shall be the sum of the items listed in
21 subdivisions (a) and (b) of this subsection:

22 (a) The energy component which is (i) the system average
23 incremental energy costs described in subdivision (1) of section
24 30 of this act, (ii) for a generating utility which has not
25 filed under such subdivision, the energy rate of the retail rate

1 schedule, applicable to the qualifying facility, filed in lieu
2 of the filings under subdivisions (1) and (2) of such section,
3 or (iii) for a nongenerating utility which has not filed under
4 subdivision (1) of such section, the energy rate shown in the
5 filing pursuant to subdivision (8) of such section; and

6 (b) If the qualifying facility provides firm power to
7 the utility, the capacity component which is (i) the utility's net
8 annual avoided capacity cost per kilowatt-hour averaged over all
9 hours shown in the filing required under subdivision (2) of section
10 30 of this act, (ii) if the generating utility has not filed under
11 such subdivision, the demand charge per kilowatt, if any, of the
12 retail rate schedule, applicable to the qualifying facility, filed
13 in lieu of the filings under subdivisions (1) and (2) of such
14 section, divided by the number of hours in the billing period,
15 or (iii) for a nongenerating utility which has not filed under
16 subdivision (2) of such section, the capacity cost per kilowatt
17 shown in the filing pursuant to subdivision (8) of such section,
18 divided by the number of hours in the billing period. If the
19 qualifying facility does not provide firm power to the utility, no
20 capacity component shall be included in the compensation paid to
21 the qualifying facility.

22 Sec. 44. (1) Time-of-day rates are required for
23 qualifying facilities with capacity of forty kilowatts or more
24 and one hundred kilowatts or less and are optional for qualifying
25 facilities with capacity less than forty kilowatts. Time-of-day

1 rates are also optional for qualifying facilities with capacity
2 greater than one hundred kilowatts if these qualifying facilities
3 provide firm power.

4 (2) The qualifying facility shall be billed for all
5 energy and capacity it consumes during each billing period
6 according to the utility's applicable retail rate schedule. Any
7 utility may propose time-of-day retail rate tariffs which require
8 qualifying facilities that choose to sell power on a time-of-day
9 basis to also purchase power on a time-of-day basis.

10 (3) The utility shall purchase all energy and capacity
11 which is made available to it by the qualifying facility.
12 Compensation to the qualifying facility shall be the sum of:

13 (a) The energy component which is (i) the appropriate
14 on-peak and off-peak system incremental costs shown in the
15 filing pursuant to subdivision (1) of section 30 of this act,
16 (ii) for a generating utility which has not filed pursuant to
17 such subdivision, the energy rate of the retail rate schedule,
18 applicable to the qualifying facility, filed in lieu of the
19 filings required under subdivisions (1) and (2) of such section, or
20 (iii) for a nongenerating utility which has not filed pursuant to
21 subsection (1) of such section, the energy rate shown in the filing
22 pursuant to subdivision (8) of such section; and

23 (b) The capacity component, which is (i) for a qualifying
24 facility which provides firm power to the utility, the utility's
25 net annual avoided capacity cost per kilowatt-hour averaged over

1 the on-peak hours as shown in the filing pursuant to subdivision
2 (2) of such section, (ii) for a generating utility which has
3 not filed pursuant to such subdivision, the demand charge per
4 kilowatt, if any, of the retail rate schedule, applicable to
5 the qualifying facility, filed in lieu of the filing required
6 pursuant to subdivisions (1) and (2) of such section divided by
7 the number of on-peak hours in the billing period, or (iii) for a
8 nongenerating utility which has not filed pursuant to subdivision
9 (2) of such section, the capacity cost per kilowatt shown in the
10 filing pursuant to subdivision (8) of such section divided by the
11 number of on-peak hours in the billing period.

12 The capacity component applies only to deliveries during
13 on-peak hours. If the qualifying facility does not provide firm
14 power to the utility, no capacity component shall be included in
15 the compensation paid to the qualifying facility.

16 Sec. 45. Except as provided in section 48 of this act,
17 a qualifying facility with capacity greater than one hundred
18 kilowatts shall negotiate a contract with a utility setting the
19 applicable rates for payments to the customer of avoided capacity
20 and energy costs.

21 Sec. 46. A qualifying facility which negotiates a
22 contract under section 45 of this act is entitled to the full
23 avoided capacity costs of the utility. The amount of capacity
24 payments shall be determined through consideration of:

25 (1) The capacity factor of the qualifying facility;

- 1 (2) The cost of the utility's avoidable capacity;
2 (3) The length of the contract term;
3 (4) Reasonable scheduling of maintenance;
4 (5) The willingness and ability of the qualifying
5 facility to provide firm power during system emergencies;
6 (6) The willingness and ability of the qualifying
7 facility to allow the utility to dispatch its generated energy;
8 (7) The willingness and ability of the qualifying
9 facility to provide firm capacity during system peaks;
10 (8) The sanctions for noncompliance with any contract
11 term; and
12 (9) The smaller capacity increments and the shorter lead
13 times available when capacity is added from qualifying facilities.

14 Sec. 47. A qualifying facility which negotiates a
15 contract under section 45 of this act is entitled to the full
16 avoided energy costs of the utility. The costs shall be adjusted as
17 appropriate to reflect line losses.

18 Sec. 48. Nothing in sections 45 to 47 of this act
19 prevents a utility from connecting qualifying facilities with
20 capacity greater than one hundred kilowatts under its standard
21 rates.

22 Sec. 49. All purchases from a qualifying facility with
23 capacity of one hundred kilowatts or less and all purchases of
24 energy from a qualifying facility with capacity over one hundred
25 kilowatts shall be considered an energy cost in calculating a

1 utility's fuel adjustment clause.

2 Sec. 50. For all qualifying facilities with capacity of
3 thirty kilowatts or more, the utility, at the qualifying facility's
4 request or with its consent, shall provide wheeling or exchange
5 agreements whenever practicable to sell the qualifying facility's
6 output to any other Nebraska utility that anticipates or plans
7 generation expansion in the ensuing ten years. Sections 51 to 53 of
8 this act apply to such wheeling or exchange agreements unless the
9 qualifying facility and the utility to which it is interconnected
10 agree otherwise.

11 Sec. 51. The utility to which the qualifying facility
12 is interconnected shall pay any reasonable wheeling charges from
13 other utilities arising from the sale of the qualifying facility's
14 output.

15 Sec. 52. Within thirty days after receipt of a qualifying
16 utility's output, the utility ultimately receiving such output
17 shall pay its resulting full avoided capacity and energy costs by
18 remittance to the utility with which the qualifying facility is
19 interconnected.

20 Sec. 53. Within fifteen days after receiving payment
21 under section 52 of this act, the utility with which the qualifying
22 facility is interconnected shall send the qualifying facility the
23 payment it has received less the total charges it has incurred
24 under section 51 of this act and its own reasonable wheeling costs.

25 Sec. 54. (1) In case of a dispute between a utility and a

1 qualifying facility or an impasse in the negotiations between them,
2 either party may request the board to determine the issue. When the
3 board makes such a determination, the burden of proof is on the
4 utility.

5 (2) In the order resolving the dispute, the board shall
6 require the prevailing party's reasonable costs, disbursements,
7 and reasonable attorney's fees to be paid by the party against
8 whom the issue or issues were adversely decided, except that
9 a qualifying facility shall pay the costs, disbursements, and
10 reasonable attorney's fees of the utility only if the board finds
11 that the claims of the qualifying facility have been made in bad
12 faith or are a sham or frivolous.

13 Sec. 55. Within sixty days after each annual filing
14 required by sections 28 to 31 of this act, each utility shall
15 furnish written notice to each of its customers that (1) the
16 utility is obligated to interconnect with and purchase electricity
17 from cogenerators and small power producers, (2) the utility is
18 obligated to provide information to all interested persons free
19 of charge upon request, and (3) any disputes over interconnection,
20 sales, and purchases are subject to resolution by the board upon
21 complaint. The notice shall be in language and form approved by the
22 board.

23 Sec. 56. Each utility shall publish information that
24 shall be available to all interested persons free of charge upon
25 request. Such information shall include, but need not be limited

1 to, the following:

2 (1) A statement of rates, terms, and conditions of
3 interconnections;

4 (2) A statement of technical requirements;

5 (3) A sample contract containing the applicable terms and
6 conditions;

7 (4) Pertinent rate schedules;

8 (5) The title, address, and telephone number of the
9 department of the utility to which inquiries should be directed;
10 and

11 (6) A statement that the board is available to resolve
12 disputes upon written request and the address and telephone number
13 of the board.

14 Sec. 57. Except as otherwise provided in sections 58 to
15 67 of this act, a utility shall interconnect with a qualifying
16 facility that offers to make energy or capacity available to
17 the utility. The utility may refuse to interconnect a qualifying
18 facility with the utility's power system until the qualifying
19 facility has submitted an interconnection plan under subdivision
20 (9) of section 37 of this act and has received approval
21 from the utility. The utility may withhold approval only for
22 failure to comply with applicable utility rules not prohibited
23 by the Net Metering Act or rules and regulations adopted and
24 promulgated under the act. The utility may include in its contract
25 reasonable technical connection and operating specifications for

1 the qualifying facility.

2 Sec. 58. A utility shall notify the appropriate telephone
3 utility and cable television firm when a qualifying facility is
4 to be interconnected with the utility's system. This notification
5 shall be as early as practicable to permit coordinated analysis and
6 testing before interconnection if necessary.

7 Sec. 59. The utility may require a separate distribution
8 transformer for a qualifying facility if necessary either to
9 protect the safety of employees or the public or to keep service to
10 other customers within prescribed limits.

11 Sec. 60. If necessary to avoid the likelihood that
12 a qualifying facility will cause problems with the service of
13 other customers, a utility may limit the capacity and operating
14 characteristics of single-phase generators in a way consistent with
15 the utility limitations for single-phase motors.

16 Sec. 61. Each qualifying facility shall have a lockable,
17 manual disconnect switch capable of isolating the generator from
18 the utility's system readily accessible to the utility.

19 Sec. 62. A utility may require that a qualifying facility
20 discontinue parallel generation operation when necessary for system
21 safety.

22 Sec. 63. If the configuration of a qualifying facility
23 precludes disconnection or testing from the utility side of
24 the interconnection, the qualifying facility shall make equipment
25 available and permit electric and communication utility personnel

1 to enter the property at reasonable times to test isolation and
2 protective equipment, to evaluate the quality of power delivered
3 to the utility's system, and to test to determine whether the
4 qualifying facility's generating system is the source of any
5 electric service or communication system problem. The utility
6 remains responsible for its personnel.

7 Sec. 64. The power output of a qualifying facility shall
8 be maintained so that frequency and voltage are compatible with
9 normal utility service and do not cause that service to fall
10 outside the prescribed limits of rules and regulations of the board
11 and other standard limitations.

12 Sec. 65. A qualifying facility shall be operated
13 so that variations from acceptable voltage levels and other
14 service-impairing disturbances do not adversely affect the service
15 or equipment of other customers and so that the facility does not
16 produce levels of harmonics which exceed the prescribed limits of
17 rules and regulations of the board of other levels customarily
18 accepted.

19 Sec. 66. A qualifying facility shall provide protection
20 for the installed equipment and adhere to all applicable national,
21 state, and local codes.

22 Sec. 67. A qualifying facility may appeal to the
23 board when the qualifying facility considers individual technical
24 requirements of the utility excessive.

25 Sec. 68. Any interconnection contract executed before the

1 effective date of this act between a utility and a qualifying
 2 facility with installed capacity of less than forty kilowatts
 3 may be canceled and replaced with the uniform statewide contract
 4 described in section 69 of this act at the option of either party
 5 to such contract by giving the other party written notice. The
 6 notice is effective upon the shortest period permitted under the
 7 existing contract for termination but not less than ten days and
 8 not more than thirty days.

9 Sec. 69. The form of the uniform statewide contract for
 10 use between a utility and a qualifying facility having less than
 11 forty kilowatts of capacity shall be as follows:

12 THIS CONTRACT is entered into on the date of
 13,, by
 14 (hereafter called "Utility") and
 15
 16 (hereafter called "QF").

17 RECITALS

18 The QF has installed electric generating facilities
 19 consisting of
 20
 21
 22 (Description of facilities),
 23 rated at less than forty kilowatts of electricity, on property
 24 located at
 25

1

2 The QF is prepared to generate electricity in parallel
3 with the Utility.

4 The QF's electric generating facilities meet the
5 requirements of rules and regulations of the Nebraska Power
6 Review Board (hereinafter "board") on cogeneration and small power
7 production and any technical standards for interconnection the
8 Utility has established that are authorized by such rules and
9 regulations.

10 The Utility is obligated under federal and Nebraska law
11 to interconnect with the QF and to purchase electricity offered for
12 sale by the QF.

13 A contract between the QF and the Utility is required by
14 the rules and regulations of the board.

15 AGREEMENTS

16 The QF and the Utility agree:

17 1. The Utility will sell electricity to the QF under the
18 rate schedule in force for the class of customer to which the QF
19 belongs.

20 2. The Utility will buy electricity from the QF under the
21 current rate schedule filed with the board. The QF has elected the
22 rate schedule category hereinafter indicated (select one):

23 a. Net energy billing rate.

24 b. Simultaneous purchase and sale billing rate.

25 c. Time-of-day purchase rates.

1 A copy of the presently filed rate schedule is attached
2 to this contract.

3 3. The rates for sales and purchases of electricity may
4 change over the time this contract is in force, due to actions of
5 the Utility or of the board, and the QF and the Utility agree that
6 sales and purchases will be made under the rates in effect each
7 month during the time this contract is in force.

8 4. The Utility shall compute the charges and payments for
9 purchases and sales for each billing period.

10 Any net credit to the QF will be made under one of the
11 following options as chosen by the QF:

12 1. Credit to the QF's account with the Utility.

13 2. Paid by check to the QF within fifteen days
14 after the billing date.

15 5. The QF must operate its electric generating facilities
16 within any rules, regulations, and policies adopted by the
17 Utility not prohibited by rules and regulations of the board
18 on cogeneration and small power production which provide reasonable
19 technical connection and operating specifications for the QF. This
20 agreement does not waive the QF's right to bring a dispute before
21 the board as authorized by the Net Metering Act and any other
22 rules and regulations of the board on cogeneration and small power
23 production authorizing board resolution of a dispute.

24 6. The Utility's rules, regulations, and policies shall
25 conform to rules and regulations of the board on cogeneration and

1 small power production.

2 7. The QF will operate its electric generating facilities
3 so that they conform to the national, state, and local electric and
4 safety codes, and will be responsible for the costs of conformance.

5 8. The QF is responsible for the actual, reasonable costs
6 of interconnection which are estimated to be \$..... . The
7 QF will pay the Utility in this way:

8
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10

11 9. The QF will give the Utility reasonable access to its
12 property and electric generating facilities if the configuration
13 of those facilities does not permit disconnection or testing from
14 the Utility's side of the interconnection. If the Utility enters
15 the QF's property, the Utility will remain responsible for its
16 personnel.

17 10. The Utility may stop providing electricity to the
18 QF during a system emergency. The utility will not discriminate
19 against the QF when it stops providing electricity or when it
20 resumes providing electricity.

21 11. The Utility may stop purchasing electricity from the
22 QF when necessary for the Utility to construct, install, maintain,
23 repair, replace, remove, investigate, or inspect any equipment or
24 facilities within its electric system. The Utility will notify the
25 QF before it stops purchasing electricity in this way:

1
.....

2
.....

3 12. The QF will keep in force liability insurance
4 against personal or property damage due to the installation,
5 interconnection, and operation of its electric generating
6 facilities. The amount of insurance coverage will be
7 \$..... (The utility may not require an amount
8 greater than \$300,000).

9 13. This contract becomes effective as soon as it is
10 signed by the QF and the Utility. This contract will remain in
11 force until either the QF or the Utility gives written notice to
12 the other that the contract is canceled. This contract will be
13 canceled thirty days after notice is given.

14 14. This contract contains all the agreements made
15 between the QF and the Utility except that this contract shall
16 at all times be subject to all rules and regulations of and
17 orders issued by the board or any other government agency having
18 jurisdiction over the subject matter of this contract. The QF and
19 the Utility are not responsible for any agreements other than those
20 stated in this contract.

21 THE QF AND THE UTILITY HAVE READ THIS CONTRACT AND AGREE
22 TO BE BOUND BY ITS TERMS. AS EVIDENCE OF THEIR AGREEMENT, THEY
23 HAVE EACH SIGNED THIS CONTRACT BELOW ON THE DATE WRITTEN AT THE
24 BEGINNING OF THIS CONTRACT.

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Qualifying Facility

By:

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.....

Utility

By:

.....

.....

(Title)

Sec. 70. Section 70-1012, Reissue Revised Statutes of
Nebraska, is amended to read:

70-1012 Before any electric generation facilities or any
transmission lines or related facilities carrying more than seven
hundred volts are constructed or acquired by any supplier, an
application, filed with the board and containing such information
as the board shall prescribe, shall be approved by the board,
except that such approval shall not be required (1) for the
construction or acquisition of a transmission line extension or
related facilities within a supplier's own service area or for the
construction or acquisition of a line not exceeding one-half mile
outside its own service area when all owners of electric lines
located within one-half mile of the extension consent thereto in

1 writing and such consents are filed with the board, (2) for any
2 generation facility when the board finds that: (a) Such facility is
3 being constructed or acquired to replace a generating plant owned
4 by an individual municipality or registered group of municipalities
5 with a capacity not greater than that of the plant being replaced,
6 (b) such facility will generate less than twenty-five thousand
7 kilowatts of electric energy at rated capacity, and (c) the
8 applicant will not use the plant or transmission capacity to supply
9 wholesale power to customers outside the applicant's existing
10 retail service area or chartered territory, or (3) for acquisition
11 of transmission lines or related facilities, within the state,
12 carrying one hundred fifteen thousand volts or less, if the current
13 owner of the transmission lines or related facilities notifies the
14 board of the lines or facilities involved in the transaction and
15 the parties to the transaction.

16 This section does not apply to a utility contracting with
17 a qualified facility under the Net Metering Act.

18 Sec. 71. Section 70-1012.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 70-1012.01 In the event a supplier terminates
21 construction or acquisition of electric generation or transmission
22 facilities after receiving approval for the facilities from the
23 Nebraska Power Review Board, the supplier shall file with the board
24 within thirty days of the action taken to terminate construction or
25 acquisition, a statement of the factors or reasons relied upon by

1 the supplier in taking such action. Within ten days after receipt
2 of such a filing, the board shall give notice of the filing to such
3 other suppliers as it deems interested or affected by such action
4 and it shall hold a hearing for the purpose of obtaining such
5 additional information as the board deems advisable or necessary
6 to inform other suppliers and the public of the reasons for such
7 termination. Notice of any such hearing shall be given to those
8 suppliers previously given notice of the filing and to any other
9 parties expressing interest in the approved application. The board
10 shall not have authority to approve or deny the action of a
11 supplier terminating construction or acquisition, and any such
12 filing or hearing shall be advisory and solely for the purpose of
13 informing the board, other suppliers, interested parties, and the
14 ratepayers of this state of the factors or reasons relied upon in
15 taking action to terminate construction or acquisition. Nothing
16 in this section shall constitute or be construed as a defense to
17 any cause of action, including a claim for breach of contract,
18 resulting from such termination.

19 This section does not apply to a utility contracting with
20 a qualified facility under the Net Metering Act.

21 Sec. 72. Original sections 70-1012 and 70-1012.01,
22 Reissue Revised Statutes of Nebraska, are repealed.